

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL

FROM: NEIL PRICE
DEPUTY ATTORNEY GENERAL

DATE: APRIL 24, 2009

SUBJECT: APPLICATION OF MOMENTUM TELECOM, INC. FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; CASE
NO. MNT-T-08-02

On August 4, 2008, Momentum Telecom, Inc. (“Momentum” or “Company”) filed an Application for a Certificate of Public Convenience and Necessity pursuant to *Idaho Code* §§ 61-526 through 528, IDAPA 31.01.01.111 and Commission Order No. 26665 to provide facilities-based local exchange and resold interexchange telecommunications services within the state of Idaho. On December 30, 2008, Momentum filed copies of its Local Exchange Telecommunications Tariff, revised in accordance with Staff’s recommendations to enhance the Company’s intent to offer local service in addition to its Voice over Internet Protocol (VoIP) services.

On March 17, 2009, the Commission issued a Notice of Application and Notice of Modified Procedure. Order No. 30749. Thereafter, the Commission received written comments submitted by Staff within the established comment period.

THE APPLICATION

Momentum is a Delaware corporation and lists its principal place of business as Birmingham, Alabama. Application at 2-3. Momentum is registered with the Idaho Secretary of State as a foreign limited liability company and lists CT Corporation System, 1111 West Jefferson, Suite 530, Boise, Idaho 83702, as its Idaho registered agent for service. *Id.* at 3. Momentum is a competitive local exchange and long distance service provider offering its services to approximately 40,000 customers in the following states: Alabama, Florida, Georgia,

Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. *Id.* at 1-2. Momentum states that it plans to provide telecommunications services in Idaho within six months of Commission authorization. *Id.* at 4.

In its Application, Momentum stated that it “proposes to offer facilities based local exchange and resold interexchange services to Idaho consumers as well as some wholesale services to other providers.” *Id.* at 4. Momentum proposes to offer services throughout Idaho in geographic areas currently served by incumbent local exchange carriers (“ILECs”) Qwest Corporation and Verizon Northwest Inc. *Id.* The Company states that it will utilize its own “soft switch to provide its facilities based services.” *Id.*

As of the date of its initial filing, Momentum has not negotiated an interconnection agreement with an ILEC in Idaho. *Id.* at 6. The Company’s Application does not seek authority to institute an escrow account because it will not require advanced payments or deposits from its customers. *Id.*

STAFF COMMENTS

Staff has reviewed Momentum’s Application and recommends that the Company be granted a CPCN subject to the following conditions: (1) compliance with the Number Pool Administrator and Order No. 30425 mandating NRUF and Utilization reporting; (2) contribution to the Idaho Universal Service Fund, Idaho Telecommunications Relay System, ITSAP and any future reporting requirements deemed appropriate for competitive telecommunication providers; and (3) upon CPCN issuance, filing a final and complete price list with the Commission containing all of its rates, terms and conditions. Staff Comments at 3-4.

Staff opined that it is currently “unclear whether fixed-location (non-nomadic) interconnected VoIP telecommunications offerings currently are properly classified as telecommunications services or information services under the . . . Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996 . . .” because the FCC has yet to make a definitive statement on the matter. *Id.* at 2. The FCC could either classify the nature of interconnected VoIP offerings, such as those offered by Momentum, as information services or preempt state regulation of all VoIP services. In either case, the Commission would no longer be authorized to regulate these services. *Id.* Nevertheless, Momentum would still be required to obtain a Certificate. *Id.* at 3.

In effect, Momentum must obtain a CPCN in order to obtain numbering resources to operate within the Idaho telecommunications market. *Id.* Staff believes that granting Momentum a CPCN is “consistent with the Commission’s obligation, under state and federal statutes, to promote competition for telecommunications services, including basic local exchange service.” *Id.* Staff asserts that the type of service offered by Momentum, “interconnected fixed VoIP service[,] is the functional equivalent of circuit switched local exchange services.” *Id.* Momentum has filed for and received a CPCN and/or a Letter of Registration to provide competitive telecommunications services in several other states besides Idaho, including Colorado and Iowa. *Id.*

Initially, Staff expressed concern with Momentum’s Application regarding the approaching 208 area code exhaust. Staff concerns were alleviated once the Company formally agreed to “comply with all federal and state guidelines that monitor and regulate the Idaho area code.” *Id.* Momentum also agreed to comply with Order No. 30425 addressing mandatory pooling, Commission Rules of Procedure and the Idaho Code. *Id.*

COMMISSION DECISION

Does the Commission wish to approve Momentum’s Application for a Certificate of Public Convenience and Necessity? If so, does the Commission wish to issue a CPCN subject to the conditions set forth in Staff’s comments?



Neil Price
Deputy Attorney General

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